

Minnesota Sentencing Guidelines Commission

The Robina Institute Research Project Update September 28, 2016

Background: The Robina Institute's recidivism study will explore the extent to which the Minnesota Guidelines Criminal History Score predicts recidivism. The project pairs MSGC data from offenders sentenced in 2003 and 2004 with follow-up conviction data obtained from the Minnesota Bureau of Criminal Apprehension (BCA). The analysis is also intended to compare the relative predictability provided by the sub-components of the MN CHS (felony points, misdemeanor points, juvenile points, and custody status points).

Issue: It is the understanding of MSGC that Robina is experiencing data matching and data interpretation problems, which have brought Robina's efforts on the project to a halt. Data used from the early 2000s are missing the key identifier (State ID) used to match to the BCA data; and BCA data are difficult to interpret for researchers unfamiliar with Minnesota Statutes.

Delay in Partnership: While Robina has received MSGC data sets, MSGC staff has not provided Robina with assistance in interpreting the data out of concern that such assistance might violate a 2012 MSGC resolution indefinitely to delay "partnership" with Robina.

The following is an excerpt of the minutes of the September 20, 2012, meeting of the MSGC, at which the resolution was adopted:

3. Guidelines Validation Project

Kelly Mitchell provided more information to the Commission about the proposed research project in partnership with the Robina Institute. She pointed out that under Minn. Stat. § 244.09 subd. 6, one of the primary purposes of the Commission is to conduct ongoing research regarding Sentencing Guidelines.

A Commission member asked if the Commission has ever partnered with a private organization for research purposes. Anne Wall stated that the Commission routinely partners with the Department of Corrections and has hired data collectors in the past. Kelly Mitchell clarified that the Robina Institute is part of the University of Minnesota Law School, which is a state entity. She also noted that other state agencies routinely partner with private organizations such as the National Center for State Courts and the Pew Center for the States.

The member also brought forward concerns about whether the Robina Institute could provide objective data that will be useful to the Commission and whether the research project is necessary. This member noted that the Robina Institute has the published goals of reducing prison population and radical reform. The member could not find any mention of public safety on the Robina Institute website, and noted that public safety is the primary goal of the Commission. Partnering with the Robina Institute may set a precedent that would make it difficult for the Commission to refuse to partner with other entities seeking to perform sentencing research. Professor Frase explained that the Robina Institute has a national perspective so not all of the goals stated by the Robina Institute are applicable in Minnesota. They do not believe Minnesota requires radical change and they are extremely supportive of the Minnesota Sentencing Guidelines.

A member asked what the purpose of the proposed partnership would be. Kelly Mitchell explained that the Robina Institute has expertise the Commission does not have. The Robina Institute could also provide additional funding and research staff for the project if Commission staff is unable to fit it in with other duties. The professors also have an extensive knowledge of the policies of other sentencing guidelines and would be able to offer informed recommendations on future policy changes. The Commission discussed whether it would be possible for Commission staff to pursue this research project on its own. Kelly Mitchell explained that Phase 1 of the project could potentially be done by staff and is based on data the Commission already has. Phase 2 of the project would require outside assistance.

The Commission discussed whether it would be possible to partner with DOC rather than the Robina Institute. The Commission has worked with the professors in the past and there was not a problem. The professors have extensive experience working with sentencing guidelines throughout the country. It was noted that having the input from national experts would be helpful if the Commission does determine that changes to the Guidelines are warranted.

A Commission member noted that this could be a limited partnership and the Commission does not need to embrace the goals of the Robina Institute. The member also stated that incarceration has gone up 500%, and that there are major racial disparities and too many nonviolent offenders in prison in Minnesota. Because of this, the member feels the Commission should move forward with the partnership. A member asked for clarification on what the problem the research is trying to solve. Kelly Mitchell explained that criminal history score is now playing a larger role in sentencing than the Commission originally intended. Incarceration rates have also

increased since the early 90's. If incarceration rates continue along the current trend line, they will impact prison capacity.

Motion to delay a partnership with the Robina Institute was made by Hon. Heidi Schellhas and seconded by Hon. Carrie Lennon.

Because they are Fellows for the Robina Institute, Jeff Edblad and John Stuart abstained from voting.

Motion carried.

MSGC Staff's Range of Responses to Data Requests: MSGC routinely provides data to the public. In 2015, MSGC staff responded to over 250 data requests totaling a little more than 600 hours. Requests are most often made by lawyers or corrections agents, however, the requests are also made by academics, students, victims, other state agencies, legislative staff, law enforcement, and the press for other purposes. Services range from directing a requestor to an existing report on the website, to providing sets of sentencing data, to preparing an individualized report on sentencing practices, to helping interpret MSGC data variables.

Studying Recidivism: Both the Commission and Robina are interested in studying recidivism. The Commission has expressed its interest in examining how the various criminal history components relate to recidivism, and a member of the Commission has asked staff to investigate difference in recidivism by offense type and by demographic factors such as race. These inquiries would be greatly aided by the completion of the Robina project.

Staff Recommendation: That the Commission permit its staff to provide assistance to Robina in order to share the workload, avoid duplication, maximize efficiencies, and see that Robina's criminal history project is completed. MSGC can provide technical assistance while Robina can provide recidivism analyses. A recidivism study of this scope would tax MSGC resources and take significantly longer to complete than the previous study undertaken by MSGC staff which was limited to a subset of cases (1st and 2nd degree drug offenders). Given MSGC staff's knowledge of the data sets and legal framework, it is more likely that the project would be completed if MSGC were to assist Robina.

Objectives: Robina would assist MSGC with the recidivism analyses of the data. In turn, MSGC staff would provide the following services:

1. Meet with Robina researchers to help design a study that would use a later data set of probationers (with fewer missing state identifiers).
2. Request MNDoc prison releases data from the same year to match to MSGC data.
3. Look up missing state identifiers on system not available to Robina researchers.
4. Assist, code, and interpret BCA data; e.g., translating statute numbers to offense titles.

Questions for the Commission: Does the Commission's 2012 partnership-delay resolution presently prohibit MSGC staff from providing assistance to the Robina Institute? Does the Commission wish to revisit its resolution indefinitely delaying a partnership?